

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1828 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

SAFURABIBI A. MOMIN & ORS

Versus

ANWAR & BROS AND OTHERS

Appearance:

MR KN VALIKARIMWALA for appellants.
MR AV TRIVEDI for Respondent No. 3.
Respondents Nos. 1 and 2 served.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/12/96

ORAL JUDGEMENT

The appellants have filed this appeal against the judgment and order passed in Workmen Compensation Case No. 87 of 1984 by the learned Civil Judge (S.D.), Panchmahals at Godhra and Ex-officio Commissioner for Workmen Compensation, Gujarat, in so far as the learned

Commissioner rejected the claim of the appellants to the tune of Rs.7,800/- and whereby the applicants have been awarded compensation only to the tune of Rs.19,200/- with interest at the rate of 6% from the date of the application till realisation. Respondents Nos. 1 and 2 have also been directed to pay penalty to the appellants to the tune of 20% of the total compensation amount which came to be worked out at Rs.3840 with interest at the rate of 6% from the date of the application till realisation. All the respondents were also directed to pay costs of the application and bear their own. The learned Commissioner for Workmen Compensation has also given direction regarding disbursement of the amount amongst the appellants.

It was the case of the appellants that the deceased Abdul Momin Ismail, the husband of appellant No.1, was working as a Driver with respondent aNo.1 on the truck bearing No. GTD-5020 and was getting a salary of Rs.800/- per month. The deceased was also getting Rs.20/- per day as Baththa charges.

On 4-1-1983 the deceased was driving the truck loaded with woods. Due to puncture in the rear wheel, he met with an accident near Vadnagar and died during the course of his employment and therefore respondents Nos.1 and 2 being the employers and also respondent No.3 being Insurance Company with which the truck in question was insured were liable for compensation to the appellants. They therefore prayed for a compensation to the tune of Rs.20,000/- from the respondents. Over and above the amount of compensation, the appellants also prayed for a penalty to the tune of 50% from the respondents.

The learned Commissioner for Workmen Compensation, after appreciating the evidence on record, recorded a finding that the salary of the deceased was between Rs.300/- and Rs.400/- per month and calculating the compensation amount as per Schedule IV of the Workmen Compensation Act, it would work out at Rs.19,200/-.

Ms.Valikarimwala, learned Advocate for the appellants contended that the learned Commissioner has erred in not believing the salary of the deceased at Rs.800 per month and also reducing the penalty at 20% instead of 50% of the total amount of compensation and to that extent the order of the learned Commissioner is erroneous and the appellants are entitled to the full amount of compensation which they claimed before the learned Commissioner.

Mr. A.V. Trivedi, learned Advocate appearing for the respondent-Insurance company, while supporting the finding of the learned Commissioner, has stated that the appellant No.1 has not produced any evidence regarding monthly salary of the deceased and respondent No.2, who had out and out supported the case of the appellants, has not produced any account books and, therefore, no interference is called for.

Before appreciating the submissions, it may be borne in mind that the appellants are coming from a lower strata of the society and it was therefore not possible for them to collect evidence or had access to the account books of the employers. The deceased was admittedly a driver serving with the respondents Nos.1 and 2. It was the specific case of the appellants in their claim application as well as in their evidence that the deceased used to get an amount of Rs.800/- per month by way of salary. The respondents Nos. 1 and 2 have in their written statement stated that they used to pay Rs.700/- per month as and by way of salary to the deceased. It is true that the respondent No.2 has not entered the witness box. But the admission on the part of the employer, though it was by the relative of the deceased, cannot be brushed aside and it is too much to expect from the appellant, who is an illiterate widow, to have access to the account books of the respondents Nos. 1 and 2 and collect the evidence regarding the salary of the deceased. Thus, even if the claim of Rs.800/- put forward by the appellant No.1 is not accepted, in any case, a conclusion can be reached that the deceased used to get the salary of Rs.700/- per month. Thus, in view of Schedule IV of the Workmen Compensation Act, the appellants are entitled to a compensation to the tune of Rs.23100/- and the respondent No.3 is bound to pay the said amount of compensation. I see no reason to interfere with regard to the finding recorded by the learned Commissioner regarding 20% of the penalty on the total amount of compensation to be paid by the respondents Nos.1 and 2 as the reasons given by the learned Commissioner are just and proper.

In the result, this appeal is allowed. The appellants are entitled to get compensation of Rs.23,100/- with interest at the rate of 6% from the date of the application till realisation. The respondents Nos. 1 and 2 are directed to pay penalty to the appellants at the rate of 20% of the total amount of compensation with interest at the rate of 6% from the date of the application till realisation. All the respondents are directed to pay costs of this appeal to

the appellants and bear their own. Respondent No.3 is directed to deposit the additional amount of compensation with interest with the learned Civil Judge (S.D.) Panchmahals at Godhra and Ex-officio Commissioner for Workmen Compensation, within six weeks from to-day and the learned Commissioner shall disburse the said amount to the appellants keeping in mind the interest of the minors within two weeks from the date of the deposit.

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